IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2040 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

PARSHRAM LAXMANBHAI KAHAR

Versus

ADMINISTRATIVE OFFICER

Appearance:

1. Special Civil Application No. 2040 of 1991

MR MA SHAH for MR SURESH M SHAH for Petitioner No. 1

MR PRANAV G DESAI for Respondents No. 1-2 (absent)

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 19/02/2002

ORAL JUDGEMENT

1. Heard Mr.M.A.Shah for learned advocate Mr.S.M.Shah for the petitioner. None present for the respondent, nor is any reply filed on behalf of the

respondent despite an order dated 5.4.1991.

2. This petition is filed with the averments that the petitioner joined the establishment of the respondent as a junior clerk since 1996, initially under orders appointing him for a fixed term. The last of such appointment on 26.8.1987 on the basis of order dated 24.8.1987 was to continue the petitioner till further orders. Thereafter, the person in whose absence the petitioner was appointed had resigned and the petitioner has been working on that post ever since then, according to the petition. It is also contended that the petitioner having completed 720 days of continuous service, he had acquired a right to be confirmed in the post. The petition appears to have been filed under an apprehension that the service of the petitioner having not been regularized and the aforementioned last order of appointment being for a temporary appointment till further orders, his service might be terminated.

3. It was fairly conceded that since the year 1987 to the date of filing of the petition or thereafter, the service of the petitioner has not come to be terminated. And, in absence of any reply by the respondent, it can be inferred that there was never a move to terminate the service of the petitioner. The issue as regards permanency or regularization in service would require relevant data for its adjudication. However, the petition can be allowed to the extent that the service of the petitioner should be considered continuous since his indefinite appointment in August 1987 and, regardless of the fact that the service subsequent to the filing of the petition was under an order of interim relief to maintain status quo, the same should be considered as regular continuous service as a junior clerk. Accordingly, the petition is partly allowed with the declaration that the petitioner shall be considered to have completed continuous service under the respondent since August 1987 and the petitioner shall be entitled to all the benefits accruing from such continuous service including the protection available under the industrial law and the applicable service rules and his case may also be considered for regularization or confirmation in accordance with the policy of the respondent. And, if any award regarding regularization or pay scale were applicable to the petitioner, he shall also be entitled to claim the benefit of the same. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

19.2.2002 (D.H.Waghela,J.)

(KMG Thilake)